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ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

**THIS IS A TRANSFER TO AN INSTRUMENTALITY OF THE STATE AND IS  
EXEMPT FROM THE NEW HAMPSHIRE REAL PROPERTY TRANSFER TAX  
PURSUANT TO RSA 78-B:2,I**

**CONSERVATION EASEMENT DEED  
AND DEED RESTRICTION**

**BARBARA B. BRODERICK**, TRUSTEE OF THE BARBARA B. BRODERICK REVOCABLE TRUST OF 2006, of 84 Bunker Hill Avenue, Stratham, County of Rockingham, State of New Hampshire, (hereinafter referred to as the "Grantor", which word shall, unless the context clearly indicates otherwise, include the Grantor's executors, administrators, legal representatives, devisees, heirs, successors and assigns),

for consideration paid, with WARRANTY covenants, grants in perpetuity to

the **SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**, a New Hampshire not-for-profit corporation duly organized, with a principal place of business at 12 Center Street, 2<sup>nd</sup> Floor, PO Box 675, Town of Exeter, County of Rockingham, State of New Hampshire, 03833 (hereinafter referred to as the "Grantee" which word where the context requires includes the plural, shall, unless the context clearly indicates otherwise, include the Grantee's successors and assigns),

with an **Executory Interest** to the **TOWN OF STRATHAM**, a New Hampshire municipal corporation duly organized, with a principal place of business at 10 Bunker Hill Avenue, Stratham, County of Rockingham, State of New Hampshire 03885, a "qualified organization" within the meaning of Section 170 (b)(1) of the Internal Revenue Service Code of 1986, as amended, and a governmental body eligible to hold a "conservation easement" within the meaning of N.H. RSA 477:45-47, as further defined in Section 8 below, (hereinafter referred to as the "Executory Interest Holder")

the **Conservation Easement** (herein referred to as the "Easement") hereinafter described with respect to that certain parcel/area of land (herein referred to as the "Protected Property") being unimproved land, consisting of 28.613 acres, more or less, situated on the Southerly side of Bunker Hill Avenue, in the Town of Stratham, County of Rockingham, State of New Hampshire, being shown as "Conservation Easement Area 28.613 ac. 1,246,394 sq. ft." on a plan of land entitled "Plat of Land on Bunker Hill Ave. Stratham N.H. Prepared for the Town of Stratham Conservation Commission" by T.D. Brouillette Land Surveying of Exeter, NH, dated February 21, 2007, as revised through February 26, 2007, (hereinafter referred to as "Easement Plan") to be recorded herewith, said tract being more particularly bounded and described in Appendix "A"

attached hereto and made a part hereof; and

the **Deed Restriction** (the "Restriction") hereinafter described with respect to the remainder of the Grantor's property that is excluded from this Easement and shown as "Easement Exclusion Area, 2.474 ac. 107,788 sq. ft." (the "Easement Exclusion Area") on said Easement Plan and more particularly bounded and described in Appendix "B" attached hereto and made a part hereof (together, the parcels bounded and described in Appendices "A" and "B" comprise the Grantor's property in its entirety).

# **1. PURPOSES**

The Easement hereby granted is pursuant to NH RSA 477:45-47, exclusively for the following conservation purposes (the "Purposes"):

- A. To protect twenty eight (28) acres, more or less, of forest land from future development; and
- B. To protect the quality of the groundwater, including an identified stratified drift aquifer, and surface water of the Protected Property; and
- C. To preserve, protect and conserve open spaces, and the wildlife habitat thereon and to protect biological diversity, native flora and fauna, and the environments, habitats, and ecological processes that support them, as those values exist on the date of this instrument, and as they may evolve in the future; and
- D. The preservation of the land subject to the Easement granted hereby for limited, non-commercial outdoor recreation by and/or the education of the general public; and
- E. Overall, to assure the Protected Property will be retained forever in its current undeveloped, scenic condition and to prevent any use or fragmentation of the Protected Property that will significantly impair or interfere with its unique and significant qualities of public benefit and conservation values.

The above purposes are consistent with the clearly delineated open space conservation goals and/or objectives as stated in Chapter 7 (Resource Conservation and Preservation) of the August, 1998 Master Plan of the Town of Stratham ("the Master Plan"): "Although Stratham's natural features still exist in abundance, past development has inevitably resulted in the loss of some resources, especially open spaces and active agricultural land. Careful attention must be given to future development so that further losses to both the natural and cultural environment are minimized and that the essential qualities that make Stratham the community it is remain intact";

and the clearly delineated open space conservation goals and/or objectives as stated in Chapter 8 (Existing and Future Land Use) of the Master Plan, which states that "[t]he protection of open space in Stratham is necessary and desirable for a variety of reasons....";

together with the published policies of the Rockingham Regional Planning Commission and with New Hampshire RSA Chapter 79-A which states: "It is hereby declared to be in the public interest to encourage the preservation of open space, thus providing a healthful and attractive outdoor environment for work and recreation of the state's citizens, maintaining the character of the state's landscape, and conserving the land, water, forest, agricultural and wildlife resources."

All of these purposes are consistent and in accordance with the U.S. Internal Revenue Code, Section 170(h).

The Easement hereby granted with respect to the Protected Property is as follows:

**2. USE LIMITATIONS** (Subject to the reserved rights specified in Section 4 below)

The Protected Property shall be maintained in perpetuity as open space subject to the following use limitations:

A. There shall not be conducted on the Protected Property any industrial or commercial activities, except agriculture and forestry, including timber harvesting, as described below, and provided that the productive capacity of the Protected Property to produce forest and/or agricultural crops shall not be degraded by on-site activities.

- (i) For the purposes hereof, "agriculture" and "forestry" shall include animal husbandry, floriculture, and horticulture activities; the production of plant and animal products for domestic or commercial purposes; the growing, stocking, cutting, and sale of Christmas trees or forest trees of any size capable of producing timber or other forest products; the construction of roads or other accessways for the purpose of removing forest products from the Protected Property; and the processing and sale of products produced on the Protected Property (such as pick-your-own fruits and vegetables and maple syrup), all as not detrimental to the Purposes of this Easement.
- (ii) Agriculture shall be performed, to the extent reasonably practicable, in accordance with a coordinated management plan for the sites and soils of the Protected Property. Agricultural management activities shall be in accordance with the then current scientifically based practices recommended by the UNH Cooperative Extension, U.S. Natural Resources Conservation Service, or other government or private, nonprofit natural resource conservation and management agencies then active. Such management activities shall not be detrimental to the Purposes of this Easement, as described in Section 1 above, nor materially impair the scenic quality of the Protected Property as viewed from public roads.
- (iii) Forestry for industrial or commercial purposes shall be performed, to the extent reasonably practicable, as hereinafter specified in accordance with the following goals, and in a manner not detrimental to the Purposes of this Easement as described in Section 1 above.

- (a) The goals are:
- maintenance of soil productivity;
  - protection of water quality, wetlands, and riparian zones;
  - maintenance or improvement of the overall quality of forest products;
  - conservation of scenic quality;
  - protection of unique or fragile natural areas;
  - protection of unique historic and cultural features; and
  - conservation of native plant and animal species.
- (b) Such forestry shall be performed in accordance with a written forest management plan ("Management Plan") consistent with this Easement, prepared by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee. Said plan shall have been prepared not more than ten years prior to the date any harvesting is expected to commence, or shall have been reviewed and updated as required by such a forester or other qualified person at least thirty (30) days prior to said date.
- (c) At least thirty (30) days prior to harvesting, Grantor shall submit to Grantee a written certification, signed by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee, that such plan has been prepared in compliance with the terms of this Easement. Grantee may request the Grantor to submit the plan itself to Grantee within ten (10) days of such request, but acknowledges that the plan's purpose is to guide forest management activities in compliance with this Easement, and that the actual activities will determine compliance therewith.
- (d) The Management Plan shall include a statement of landowner objectives, and shall specifically address:
- the long-term protection of those values for which this easement is granted, as described in Section 1 above;
  - the goals in Section 2.A.iii.a above; and
- (e) Timber harvesting with respect to such forestry shall be conducted in accordance with said plan and be supervised by a licensed professional forester, or by other qualified person approved in advance and in writing by the Grantee.
- (f) Such forestry shall be carried out in accordance with all applicable local, state, federal, and other governmental laws and regulations, and, to the extent reasonably practicable, in accordance with then-current, generally accepted best management practices for the sites, soils, and terrain of the



Protected Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 1996), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (New Hampshire Forest Sustainability Standards Work Team, 1997), or similar successor publications.

- (g) In areas used by, or visible to, the general public, such forestry shall be carried out, to the extent reasonably practicable, in accordance with the recommendations contained in "A Guide to Logging Aesthetics: Practical Tips for Loggers, Foresters, and Landowners" (Geoffrey Jones, 1993) or similar successor publications.

B. The Protected Property shall not be subdivided or conveyed in any form in separate parcels. The Grantor further covenants and agrees to not undertake any action that would have the effect of subdividing or conveying any part of the Protected Property. The lease of any portion of the Protected Property for any use permitted by this Easement shall not violate this provision.

C. No structure or improvement shall be constructed, placed, or introduced onto the Protected Property, except for structures and improvements which are: i) necessary in the accomplishment of the agricultural, forestry, non-commercial outdoor recreational, habitat management and conservation purposes of the Protected Property and which may include but not be limited to a road, dam, fence, utility line, bridge, culvert, barn, maple sugar house, or shed; ii) not detrimental to the Purposes of this Easement. Notwithstanding the above, there shall not be constructed, placed, or introduced onto the Protected Property any of the following structures or improvements: residence, dwelling, mobile home, cabin, residential driveway, any portion of a septic system, tennis court, swimming pool, athletic field, golf course, telecommunications tower (wireless or other) or aircraft landing area.

D. No removal, filling, or other disturbances of soil surface, nor any changes in topography, surface or subsurface water systems, wetlands, or natural habitat shall be allowed unless such activities:

- (i) are commonly necessary in the accomplishment of the agricultural, forestry, conservation, habitat management, or noncommercial outdoor recreational uses of the Protected Property; and
- (ii) do not harm state or federally recognized rare, threatened, or endangered species, such determination of harm to be based upon information from the New Hampshire Natural Heritage Inventory or the agency then recognized by the State of New Hampshire as having responsibility for identification and/or conservation of such species and/or natural communities; and
- (iii) are not detrimental to the Purposes of this Easement.

Prior to commencement of any such activities, all necessary federal, state, local, and other governmental permits and approvals shall be secured.

E. No outdoor advertising structures such as signs and billboards shall be displayed on the Protected Property except as desirable or necessary in the accomplishment of the agricultural, forestry, conservation, or noncommercial outdoor recreational uses of the Protected Property, and provided such signs are not detrimental to the Purposes of this Easement. No sign shall be artificially illuminated.

F. There shall be no mining, quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials on the Protected Property, except in connection with any improvements made pursuant to the provisions of sections 2.A., C., D., or E., above. No such rocks, minerals, gravel, sand, topsoil, or other similar materials shall be removed from the Protected Property.

G. There shall be no dumping, storage, injection, burning or burial of man-made materials, building demolition or construction debris, trash, tires, vehicle bodies or parts or similar materials, solid or hazardous waste or any other material known to be hazardous to human health or the environment including snow from municipal plowing.

H. No new rights-of-way, easements of ingress and egress, driveways, roads, or utility lines shall be constructed, developed or maintained into, on, over, under, or across the Protected Property, without the prior written approval of Grantee, except those of record and those specifically permitted under this Easement.

I. No use shall be made of the Protected Property and no activity thereon shall be permitted which, in the reasonable opinion of Grantee, is or may possess the potential to become inconsistent with the Purposes of this Easement.

J. The Protected Property shall not be posted against, and the Grantor shall keep access to and use of the Protected Property open to the public for limited, non-motorized, non-wheeled, pedestrian, non-commercial, outdoor recreational and outdoor educational purposes as will have minimal impact on the Protected Property, such as but not limited to hiking, wildlife observation, and cross-country skiing, but not for camping. However, the Grantee shall be under no duty to supervise said access, use, or purpose. Further, such pedestrian access shall not be interpreted to include the right of the Grantee to construct trails within the Protected Property.

K. The Protected Property shall in no way be used to satisfy the density requirements of any applicable zoning ordinance or subdivision regulation with respect to the development of any other property.

### **3. DEED RESTRICTION CONVEYED ON EASEMENT EXCLUSION AREA**

For the benefit and in aid of the Easement granted hereby and running therewith, the Grantor hereby also grants to the Grantee the right to enforce the following Deed Restriction with respect to the Easement Exclusion Area:

The Easement Exclusion Area shall not be sold separately or subdivided from the Protected Property.

**4. RESERVED RIGHTS**

All uses of the Protected Property not expressly prohibited herein and not inconsistent with the Purposes of this Easement are expressly reserved to the Grantor. In addition the Grantor reserves and the Grantee and Executory Interest Holder acknowledge and agree to the following express provisions:

A. The Grantor reserves the right to post the Protected Property to prohibit hunting, to prohibit the possession of firearms or other weapons by the public while on the Protected Property, and to prohibit any public access to the Easement by motorized vehicles, wheeled or otherwise, including dirt bikes or trail bikes. The Grantor may erect a fence or other physical barrier along the Protected Property's frontage on Bunker Hill Avenue so that no such vehicles can enter the Protected Property from Bunker Hill Avenue.

B. The Grantor reserves the right to post the Protected Property against public access to agricultural cropland during the planting and growing season, to lands while being grazed by livestock, and to forestland during harvesting or other forest management activities. Further, the Grantor reserves the right to restrict pedestrian access to the Protected Property upon the written agreement of the Grantee should such access and/or use be detrimental to the Purposes of this Easement. This provision is an exception to Section 2.J above.

C. The Grantor reserves the right to mark in an appropriate fashion the location of the boundary line which delineates the Easement Exclusion Area from the Protected Property so as to provide appropriate notice to the public that the public is precluded from access to the Easement Exclusion Area.

D. The Grantor reserves the right to conduct non-commercial forestry, including non-commercial timber stand improvement activities and the small-scale cutting or harvesting of wood products for the personal, domestic use of the Grantor, such as clearing trees to maintain the edge of a field, thinning the forest stand to maintain a view, or cutting firewood for the personal, domestic consumption of the Grantor. Non-commercial Forestry shall not include activities conducted for the contemporaneous production of sale proceeds or other consideration. Non-commercial forestry shall be carried out in accordance with all applicable local, state, and federal laws and regulations, and to the extent reasonably practicable, with the then-current, generally accepted best management practices for the sites, soils, and terrain of the Protected Property. For references, see "Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire" (J.B. Cullen, 1996), and "Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire" (New Hampshire Forest Sustainability Standards Work Team, 1997), or similar successor publications.

E. Subject to the review and approval of the Grantee, the Grantor reserves the right

to relocate the existing septic system from its current location within the Easement Exclusion Area to the Protected Property, and to maintain, repair, and replace in-kind said relocated septic system, under the following conditions:

- (i) The existing septic system servicing the residence on the Easement Exclusion Area fails and cannot be reasonably replaced at the current location or at another location within the Easement Exclusion Area;
- (ii) The relocated septic system shall continue to serve only the residence on the Easement Exclusion Area;
- (iii) The relocated septic system shall be located within the Protected Property so as to minimize its impacts on the Purposes of this Easement; and
- (iv) Any such relocation activities pursuant to this Section 4.E shall be undertaken in accordance with the then accepted standards and practices and all existing local, state, and federal regulations.

At least thirty (30) days before undertaking any relocation activities pursuant to this paragraph, the Grantor shall notify the Grantee in writing, including a description of the proposed location, timing, and rationale of the proposed activity with a specific explanation of how the proposed exercise of this reserved right addresses items (i) through (iv) above. Within 30 days of receipt of said notification, the Grantee shall approve, approve with conditions, or disapprove the proposed exercise in writing to the Grantor. Such approval shall not be unreasonably withheld. This provision is an exception to 2.A., C., D., and F., above.

F. The Grantor and the Grantee further agree to avail themselves of the provisions of Section 9 below to mediate or arbitrate any differences or disagreements that may arise in the application of any restrictions to public access to the Protected Property.

##### **5. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE**

A. The Grantor agrees to notify the Grantee in writing at least 10 days before the transfer of title to the Protected Property to any successor in interest, along with the name(s) and address(es) of such successor(s) in interest.

B. In any deed conveying an interest in all or part of the Protected Property, Grantor shall make reference to this Easement and shall indicate that the provisions of this Easement are binding upon all successors in interest in the Protected Property in perpetuity; provided, however, the provisions of this Easement shall be binding on all successors in interest to the Protected Property notwithstanding the failure of any deed to the Protected Property to reference this Easement.

C. The Grantee shall be under no obligation to maintain the Protected Property or pay any taxes or assessments thereon. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of

the Protected Property.

#### **6. BENEFITS, BURDENS, AND ACCESS**

A. The burden of the Easement conveyed hereby shall run with the Protected Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of this Easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable or transferable only to the State of New Hampshire, the U.S. Government, or any subdivision of either of them, consistent with Section 170(c)(1) of the U.S. Internal Revenue Code of 1986, as amended, or to any qualified organization within the meaning of Section 170(h)(3) of said Code, which organization has among its purposes the conservation and preservation of land and water areas and agrees to and is capable of enforcing the conservation purposes of this Easement. Any such assignee or transferee shall have like power of assignment or transfer.

B. The Grantee shall have reasonable access to the Protected Property and all of its parts for such inspection as is necessary to determine compliance with and to enforce this Easement and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement.

#### **7. BASELINE DOCUMENTATION AND STEWARDSHIP RESPONSIBILITIES OF THE GRANTEE**

To facilitate the fulfillment of their responsibilities under this Easement, the Grantee shall be responsible for the following which shall include, but not be limited to:

- i. Maintaining baseline information and monitoring the Protected Property in accordance with applicable policies and guidelines, such as the Standards and Practices of the Land Trust Alliance;
- ii. Responding to Grantor requests for approvals required under this Easement; and
- iii. Investigating potential easement violations and/or encroachments and responding accordingly.

Copies of the Baseline Documentation Report shall be held by the Grantee and the Executory Interest Holder.

#### **8. EXECUTORY INTEREST**

A. If the Grantee ceases to enforce the Easement conveyed hereby or fails to enforce it within thirty (30) days after receipt of written notice from the **TOWN OF STRATHAM**, a qualified organization as specified in the Section "Benefits and Burdens" above (sometimes herein referred to as the "Executory Interest Holder"), requesting such enforcement delivered in hand or by certified mail, return receipt requested, then the Executory Interest Holder shall have the right to enforce this Easement. All reasonable costs of such enforcement shall be paid by the

Grantee. In such circumstance, or in the event the Grantee acquires the underlying fee interest in the Protected Property, the Executory Interest Holder shall then also have the right to terminate the Easement interest of the Grantee in the Protected Property by recording a notice to that effect in the Registry of Deeds referring hereto and shall thereupon assume and thereafter have all interests, rights, responsibilities and duties granted to and incumbent upon the Grantee in this Easement.

B. The interests held by the Executory Interest Holder are assignable or transferable to any party qualified to become the Grantee's assignee or transferee as specified in the Section "Benefits, Burdens, and Access" above. Any such assignee or transferee shall have like power of assignment or transfer.

## **9. RESOLUTION OF DISAGREEMENTS**

A. The Grantor and the Grantee desire that issues arising from time to time concerning uses or activities in light of the provisions of the Easement will first be addressed through candid and open communication between the parties rather than unnecessarily formal or adversarial action. Therefore, the Grantor and the Grantee agree that if either party becomes concerned whether any use or activity (which together for the purposes of this Section, "Resolution of Disagreements," shall be referred to as the "Activity") complies with the provisions of this Easement, wherever reasonably possible the concerned party shall notify the other party of the perceived or potential problem, and the parties shall explore the possibility of reaching an agreeable resolution by informal dialogue.

B. If informal dialogue does not resolve a disagreement regarding the Activity, and the Grantor agrees not to proceed or to continue with the Activity pending resolution of the disagreement concerning the Activity, either party may refer the disagreement to mediation by written notice to the other. Within ten (10) days of the delivery of such a notice, the parties shall agree on a single impartial mediator who shall be an attorney licensed to practice law in New Hampshire or an experienced land use or land conservation professional, both of which must have experience with conservation easements and training in mediation. Mediation shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

C. If the parties agree to bypass mediation, or if the disagreement concerning the Activity has not been resolved by mediation within sixty (60) days after delivery of the notice of mediation, or if the parties are unable to agree on a mediator within ten (10) days after delivery of the notice of mediation, the disagreement shall be submitted to binding arbitration in accordance with New Hampshire RSA 542. The Grantor and the Grantee shall each choose an arbitrator within twenty (20) days of the delivery of written notice from either party referring the matter to arbitration. The arbitrators so chosen shall in turn choose a third arbitrator within twenty (20) days of the selection of the second arbitrator. The arbitrators so chosen shall forthwith set as early a hearing date as is practicable, which they may postpone only for good cause shown. The arbitration hearing shall be conducted in Exeter, New Hampshire, or such other location as the parties shall agree. A decision by two of the three arbitrators, made as soon

as practicable after submission of the matter, shall be binding upon the parties and shall be enforceable as part of this Easement.

D. If the parties do not agree to resolve the dispute by arbitration, or if the parties are unable to agree on the selection of an arbitrator, then either party may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation by permanent injunction, and to require the restoration of the Protected Property to its condition prior to the breach and for such damages as appropriate.

E. Notwithstanding the availability of mediation and arbitration to address disagreements concerning the compliance of any Activity with the provisions of this Easement, if the Grantee believes that some action or inaction of the Grantor or a third party is causing irreparable harm or damage to the Protected Property, the Grantee may seek a temporary restraining order, preliminary injunction or other form of equitable relief from any court of competent jurisdiction to cause the cessation of any such damage or harm, to enforce the terms of this Easement, to enjoin any violation by permanent injunction, and to require the restoration of the Protected Property to its condition prior to any breach.

#### **10. BREACH OF EASEMENT – GRANTEE’S REMEDIES**

A. If the Grantee determines that a breach of this Easement has occurred or is threatened, the Grantee shall notify the Grantor in writing of such breach and demand corrective action to cure the breach and, where the breach involves injury to the Protected Property, to restore the portion of the Protected Property so injured to its prior condition.

B. The Grantor shall, within thirty (30) days after receipt of such notice or after otherwise learning of such breach, undertake those actions, including restoration, which are reasonably calculated to cure swiftly said breach and to repair any damage. The Grantor shall promptly notify the Grantee of its actions taken hereunder.

C. If the Grantor fails to perform its obligations under the immediately preceding paragraph B. above, or fails to continue diligently to cure any breach until finally cured, the Grantee may undertake any actions that are reasonably necessary to repair any damage in the Grantor’s name or to cure such breach, including an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Protected Property to the condition that existed prior to any such injury.

D. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation features of the Protected Property, the Grantee may pursue its remedies under this Section, “Breach of Easement...,” without prior notice to the Grantor or without waiting for the period provided for cure to expire.

E. The Grantee shall be entitled to recover damages from the party directly or



primarily responsible for violation of the provisions of this Easement or injury to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Protected Property. Without limiting the Grantor's liability therefore, the Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.

F. The Grantee's rights under this Section, "Breach of Easement...", apply equally in the event of either actual or threatened breach of this Easement, and are in addition to the provisions of the preceding Section, "Resolution of Disagreements," which section shall also apply to any disagreement that may arise with respect to activities undertaken in response to a notice of breach and the exercise of the Grantee's rights hereunder.

G. The Grantor and the Grantee acknowledge and agree that should the Grantee determine, in its sole discretion, that the conservation features protected by this Easement are in immediate danger of irreparable harm, the Grantee may seek the injunctive relief described in the third paragraph of this Section, "Breach of Easement...", both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The Grantee's remedies described in this Section, "Breach of Easement...", shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

H. Provided that the Grantor is directly or primarily responsible for the breach, all reasonable costs incurred by the Grantee in enforcing the terms of this Easement against the Grantor, including, without limitation, staff and consultant costs, reasonable attorneys' fees and costs and expenses of suit, and any costs of restoration necessitated by the Grantor's breach of this Easement shall be borne by the Grantor; and provided further, however, that if the Grantor ultimately prevails in a judicial enforcement action each party shall bear its own costs. Notwithstanding the foregoing, if the Grantee initiates litigation against the Grantor to enforce this Easement, and if the court determines that the litigation was initiated without reasonable cause or in bad faith, then the court may require the Grantee to reimburse the Grantor's reasonable costs and reasonable attorney's fees in defending the action.

I. Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term thereof by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of the Grantee's rights hereunder. No delay or omission by the Grantee in the exercise of any right or remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver. The Grantor hereby waives any defense of laches or estoppel.

J. Nothing contained in this Easement shall be construed to entitle the Grantee to bring any action against the Grantor for any injury to or change in the Protected Property resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties, natural disasters such as fire, flood, storm, disease, infestation and earth movement, or from any prudent action taken by the Grantor under emergency conditions to



prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. The Grantee and the Grantor reserve the right, separately or collectively, to pursue all legal and/or equitable remedies, as set forth in this Section, "Breach of Easement...", against any third party responsible for any actions inconsistent with the provisions of this Easement.

**11. NOTICES**

All notices, requests and other communications, required to be given under this Easement shall be in writing, except as otherwise provided herein, and shall be delivered in hand or sent by certified mail, postage prepaid, return receipt requested to the appropriate address set forth above or at such other address as the Grantor or the Grantee may hereafter designate by notice given in accordance herewith. Notice shall be deemed to have been given when so delivered or so mailed.

Notices, requests and other communication to the Grantee shall be directed to:

Executive Director  
Southeast Land Trust of New Hampshire  
PO Box 675  
Exeter, NH 03833

Notices, requests and other communication to the Executory Interest Holder shall be directed to:

Board of Selectmen  
Town of Stratham  
10 Bunker Hill Ave.  
Stratham, NH 03885

**12. SEVERABILITY**

If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid by a court of competent jurisdiction, by confirmation of an arbitration award or otherwise, the remainder of the provisions of this Easement or the application of such provision to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

**13. CONDEMNATION/EXTINGUISHMENT**

A. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate in whole or in part the Easement conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all incidental or direct damages and expenses incurred by them thereby to be paid out of the damages recovered.

B. The balance of the land damages recovered (including, for purposes of this subsection, proceeds from any lawful sale of the Protected Property unencumbered by the restrictions hereunder in lieu of condemnation) shall be divided between the Grantor, the

Grantee, and the Town of Stratham in proportion to the fair market value of their respective interests in the Protected Property on the date of execution of this Easement and the Grantee's and Town of Stratham's financial contribution to the acquisition of this Easement. For this purpose and that of any other judicial extinguishment of this Easement, in whole or in part, the value of the Grantor's and Grantee's interests shall be determined by an appraisal prepared by a qualified appraiser at the time of condemnation or extinguishment. As the Town of Stratham provided the full purchase price of \$275,000 for the acquisition of this Easement, the Town of Stratham shall receive 100% of the Grantee's value. In the case where the Town of Stratham or an entity acting on behalf of the Town of Stratham, undertakes the condemnation of all or a portion of the Protected Property, the Grantee shall keep 100% of the value from its interest and the Town of Stratham shall receive none.

C. The Grantee and the Town of Stratham shall use its share of the proceeds in a manner consistent with and in furtherance of one or more of the conservation purposes set forth herein.

#### 14. **ADDITIONAL EASEMENT**

Should the Grantor determine that the expressed Purposes of this Easement could better be effectuated by the conveyance of an additional easement, the Grantor may execute an additional instrument to that effect, provided that the conservation purposes of this Easement are not diminished thereby and that a public agency or qualified organization described in Section 6.A., **BENEFITS, BURDENS AND ACCESS** above, accepts and records the additional easement. Any easement arising after the date of execution of this Easement shall be subordinated, by operation of law or otherwise, to this easement.

#### 15. **SUBORDINATION**

Any mortgage or lien arising after the date of this Easement shall be subordinated by operation of law or otherwise, to the terms of this Easement.

#### 16. **AMENDMENT**

Except as specifically provided herein, this Easement may be amended only if such amendment is intended to clarify or correct this Easement, or if it significantly furthers the conservation Purposes of this Easement or increases public benefit consistent with the conservation Purposes of this Easement. Any such amendment shall be mutually agreed upon by the Grantor, the Grantee, and the Executory Interest Holder and shall comply with all applicable laws and regulations, and shall be duly executed and recorded.

#### 17. **NO MERGER**

A. The Grantor and Grantee explicitly agree that it is their express intent, forming a part of the consideration hereunder, that the provisions of the Easement set forth herein are to last in perpetuity, and that to that end no purchase or transfer of the underlying fee interest in the Protected Property by or to either of the Grantee, or any successor or assignee shall be deemed to

eliminate these Easement terms, or any portion thereof, pursuant to the doctrine of "merger" or any other legal doctrine.

B. In the event Grantee takes legal title to Grantor's interest in the Protected Property, Grantee shall commit the monitoring and enforcement of the Easement to the Executory Interest Holder or, alternatively to another qualified organization within the meaning of Section 107(h) (3) of the U.S. Internal Revenue Code (1986), which organization has among its purposes the conservation and preservation of land and water areas until Grantee conveys title away to a successor Grantor.

**The Grantee, by accepting and recording this Easement, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein granted to and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement is delivered.**

### TRUSTEE CERTIFICATE

I, BARBARA B. BRODERICK, as Trustee of the Barbara B. Broderick Revocable Trust of 2006, hereby certify that as such Trustee, I have full and absolute power thereunder to convey any interest in real estate and the improvements thereon held therein and no purchaser or third party shall be bound to inquire whether as such Trustee I have said power or am properly exercising said power or to see to the application of any trusts asset paid to me as such Trustee for conveyance hereof.

IN WITNESS WHEREOF, the undersigned have executed or caused to be executed this 16 day of May, 2007.

*Barbara B. Broderick, Trustee*

BARBARA B. BRODERICK, TRUSTEE

BARBARA B. BRODERICK REVOCABLE TRUST OF 2006

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

The foregoing Conservation Easement Deed and Deed Restriction was acknowledged before me this 16<sup>th</sup> day of May, 2007 by Barbara B. Broderick, Trustee of the Barbara B. Broderick Revocable Trust of 2006, as her voluntary act and deed.

*Lynn D. Morse*  
Type or Print Name: LYNN D. MORSE  
Justice of the Peace/Notary Public  
My Commission Expires: 2-7-2012

**ACCEPTED: SOUTHEAST LAND TRUST OF NEW HAMPSHIRE**

By: T.B. Chamberlin  
Thomas B. Chamberlin  
Title: President, Southeast Land Trust of New Hampshire  
Date: 5/10/07

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM, ss

On this 10<sup>th</sup> day of May 2007, before me personally appeared **Thomas B. Chamberlin**, President of the Southeast Land Trust of New Hampshire, a New Hampshire not-for-profit corporation, known to me, or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same as his free act and deed on behalf of Southeast Land Trust of New Hampshire, a New Hampshire not-for-profit corporation for the purposes therein contained.

Brian M. Hart

Brian M. Hart, Justice of the Peace  
My commission expires April 20, 2010.


BRIAN M. HART, Justice of the Peace  
My Commission Expires April 20, 2010

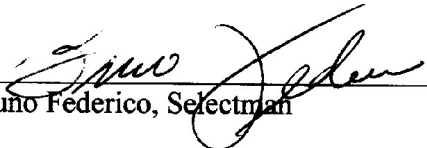



**EXECUTORY INTEREST ACCEPTED BY THE TOWN OF STRATHAM, NEW HAMPSHIRE**

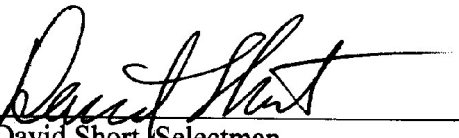
**BOARD OF SELECTMEN**

By:   
Martin Wool, Chair, Board of Selectmen

By:   
David Canada, Selectman

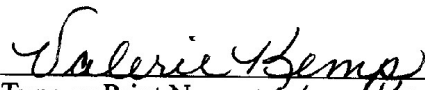
By:   
Bruno Federico, Selectman

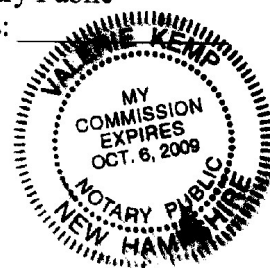
By:   
Kirk Scamman, Selectman

By:   
David Short, Selectman

STATE OF NEW HAMPSHIRE  
COUNTY OF ROCKINGHAM

The foregoing Conservation Easement Deed and Deed Restriction was acknowledged before me this 14 day of May, 2007 by Martin Wool,  
David Canada, Bruno Federico,  
Kirk Scamman, and David Short, duly authorized  
Selectmen of the Town of Stratham Board of Selectmen, on behalf of the Town of Stratham.

  
Type or Print Name: Valerie Kemp  
Justice of the Peace/Notary Public  
My Commission Expires: \_\_\_\_\_



**Appendix A  
PROTECTED PROPERTY  
CONSERVATION EASEMENT AREA**

A certain tract or parcel of land, without buildings, situated on the southwesterly side of Bunker Hill Avenue, in Stratham, County of Rockingham, State of New Hampshire and being shown as Conservation Easement Area on plan of land entitled "Plat of Land on Bunker Hill Ave. Stratham N.H. Prepared for the Town of Stratham Conservation Commission" dated February 21, 2007, as revised to February 26, 2007, prepared by T.D. Brouillette Land Surveying, which plan is recorded in the Rockingham County Registry of Deeds as plan # D-34722 and being bounded and described as follows:

Beginning at an iron rod set on the southwesterly side of the said Bunker Hill Avenue at the northwesterly corner of the within described premises and at the northeasterly corner of land of Richard P. & Nancy L. Law; thence South 41° 06' 57" East by Bunker Hill Avenue 50.98 feet to an iron rod at the Easement Exclusion Area shown on said plan; thence turning and running South 52° 12' 59" West by the Easement Exclusion Area 297.04 feet to an iron rod; thence turning and running South 36° 42' 17" East by the Easement Exclusion Area 378.44 feet to an iron rod at land of David Linnane; thence turning and running South 42° 20' 56" West by land of Linnane 81.81 feet to an iron rod at land of James M. and Michele L. Cooper; thence South 42° 35' 44" West by land of Cooper 377.44 feet to a drill hole in the end of a stonewall; thence South 42° 43' 58" West continuing by land of said Cooper 113.14 feet to an iron pipe; thence South 41° 43' 30" West continuing by land of said Cooper 96.59 feet to a drill hole set in the end of the stonewall at land of Kirriemuir Condominium Association;

Thence for 6 courses by land of said Condominium Association in part by a stonewall and a barbed wire fence as follows: South 42° 28' 51" West 250.65 feet; South 42° 42' 47" West 284.42 feet; South 41° 21' 01" West 73.86 feet; South 42° 47' 38" West 312.53 feet; South 43° 42' 52" West 73.56 feet; and South 41° 09' 17" West 308.10 feet to a 36" double blazed beech with barbed wire at land of Jeffrey & Judith Hurlbert;

Thence turning and running for 8 courses by land of said Hurlbert and the barbed wire fence as follows: South 89° 58' 43" West 10.37 feet; North 52° 43' 36" West 23.77 feet; North 82° 31' 44" West 38.39 feet; North 71° 21' 18" West 62.93 feet; North 72° 57' 06" West 35.60 feet; South 87° 11' 41" West 87.78 feet; South 88° 30' 22" West 63.31 feet and at land of Paul J. & Wendy McKeon; South 86° 36' 11" West 79.24 feet to a 7" beech with barbed wire at land of Paul J. & Wendy McKeon;

Thence turning and running South 68° 43' 13" West by land of said McKeon 21.01 feet; thence South 48° 35' 02" West 116.86 feet to an 18" hickory at land of Francis & Barbara McDonnell; thence turning and running for 6 courses by land of said McDonnell and the barbed wire fence as follows: North 35° 49' 46" West 92.40 feet; North 27° 24' 02" West 72.54 feet; North 21° 51' 26" West 67.12 feet; North 26° 25' 32" West 52.20 feet; North 31° 47' 51" West

33.14 feet; and North 25° 58' 50" West 44.70 feet to an iron rod at land of Georgiana Law Revocable Trust;

Thence turning and running North 28° 01' 13" East for 352.53 feet to a point at land of said Georgiana Law Revocable Trust;

Thence turning and running for 18 courses by land of said trust in part by a barbed wire fence and stone wall as follows: North 62° 32' 01" East 6.65 feet; North 62° 32' 01" East 75.13 feet; North 64° 51' 26" East 83.74 feet; North 62° 23' 27" East 108.92 feet; North 64° 46' 51" East 43.33 feet; North 63° 28' 26" East 110.23 feet; North 63° 18' 56" East 213.73 feet; North 48° 42' 33" East 82.99 feet; North 49° 00' 04" East 162.67 feet; North 46° 05' 37" East 86.60 feet; North 49° 15' 19" East 267.88 feet; North 44° 42' 39" East 42.29 feet; North 45° 38' 50" East 221.00 feet; North 46° 00' 04" East 188.00 feet; North 47° 58' 00" East 42.67 feet; North 44° 50' 08" East 102.58 feet; North 47° 14' 57" East 91.40 feet; and North 44° 26' 00" East 58.12 feet to a drill hole in the stonewall at land of Richard P. and Nancy L. Law; thence turning and running North 52° 12' 59" East by land of said Law and a stonewall 306.73 feet through a steel t-bar to the iron rod at the point of beginning.

The Conservation Easement Area contains 28.613 acres.

**Appendix B**  
**EASEMENT EXCLUSION AREA**

A certain tract or parcel of land, with the buildings thereon, situated on the southwesterly side of Bunker Hill Avenue, in Stratham, County of Rockingham, State of New Hampshire and being shown as Easement Exclusion Area on plan of land entitled "Plat of Land on Bunker Hill Ave. Stratham N.H. Prepared for the Town of Stratham Conservation Commission", dated February 21, 2007, as revised to February 26, 2007 prepared by T.D. Brouillette Land Surveying, which plan is recorded in the Rockingham County Registry of Deeds as plan # D- 34722 and being bounded and described as follows:

Beginning at a iron rod set on the southwesterly side of said Bunker Hill Avenue at the northwesterly corner of the within described premises and at the northeasterly corner of the Conservation Easement Area shown on said plan; thence South  $41^{\circ} 06' 57''$  East by Bunker Hill Avenue 104.07 feet to a drill hole in the end of a stonewall; thence South  $38^{\circ} 49' 14''$  East continuing by Bunker Hill Avenue and the stonewall 209.00 feet to a drill hole at the end of the stonewall; thence South  $37^{\circ} 51' 54''$  East by Bunker Hill Avenue 9.98 feet to an iron rod at land of David Linnane; thence turning and running South  $42^{\circ} 20' 56''$  West by land of Linnane 318.77 feet to an iron rod at the Conservation Easement Area; thence turning and running North  $36^{\circ} 42' 17''$  West by the Conservation Easement Area 378.44 feet to an iron rod; thence turning and running North  $52^{\circ} 12' 59''$  East continuing by the Conservation Easement Area 297.04 feet to the iron rod at the point of beginning.

The Easement Exclusion Area contains 2.474 acres.